

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

LEADERSHIP PUBLIC SCHOOLS, INC.

Employer-Petitioner

and

Case 32-RM-800

CALIFORNIA FEDERATION OF TEACHERS,
AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Union

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD

Intervenor

DECISION AND ORDER

Leadership Public Schools, Inc. (the Employer-Petitioner) filed the instant petition under Section 9(c) of the National Labor Relations Act (the Act), as amended, after the California Federation of Teachers, American Federation of Teachers, AFL-CIO (the Union), presented it with a claim to be recognized as the representative of the faculty of Leadership Public Schools-Richmond (LPS-Richmond), a public charter school operated by the Employer-Petitioner in Richmond, California. The Union also filed a representation petition with the California Public Employment Relations Board (PERB)¹ seeking to represent a unit of all full-time and part-time certificated employees of the Employer-Petitioner at Leadership Public Schools-Richmond.²

¹ PERB's motion to intervene was granted for limited jurisdictional purposes only. PERB administers California's public employee labor relations laws, including the Educational Employment Relations Act, Cal. Gov. Code § 3540, et seq., which applies to the labor relations of public school employers in California.

² As discussed herein, the hearing in this case was bifurcated, and no evidence was taken regarding an appropriate unit pending resolution of the jurisdiction issue. However, based on the Union's claim to represent the "faculty" and its PERB petition to represent "certificated employees," I recognize, without making any finding regarding an appropriate unit, that the Union seeks a unit of teachers.

Consistent with the Union's request for recognition, the petition in this case identifies the employer as "Leadership Public Schools-Richmond."

The Employer-Petitioner claims that it is subject to the jurisdiction of the National Labor Relations Board (the Board) because it is an employer as defined by Section 2(2) of the Act. The Union and PERB contend that the Employer-Petitioner, as operator of LPS-Richmond, is exempt from the Act's coverage because LPS-Richmond is a political subdivision of the State of California. A hearing officer of the Board held a hearing in this matter. Both parties presented evidence and a closing argument at the hearing. Both parties and the Intervenor filed post-hearing briefs.³ As evidenced at the hearing and in the briefs, the sole issue is whether the Board has jurisdiction over the Employer-Petitioner at LPS-Richmond.

I have considered the evidence and the arguments presented. For the reasons set forth below, I have concluded that LPS-Richmond is a political subdivision exempt from the Act's coverage, and therefore, I am dismissing the petition.

FACTS

The Employer-Petitioner, a California nonprofit public benefit corporation with an office in San Francisco, was incorporated by Mark Kushner, a private individual, on May 29, 2002 for the purpose of operating public charter schools. The Employer-Petitioner's incorporation for this purpose was consistent with the California Charter Schools Act of 1992 (CSA),⁴ which provides that a public charter school may be operated by a nonprofit public benefit corporation formed under the California Corporations Code.⁵ Thus, the Employer-Petitioner's Articles of Incorporation state as follows:

³ Amicus curiae briefs were submitted by the California Teachers Association, another union representing certificated public school teachers in California, and the California School Employees Association, a union representing non-teaching public school employees. In making the decision herein, I have not considered information not already contained within the record developed at the hearing.

⁴ Cal. Educ. Code § 47600 et seq.

⁵ Cal. Educ. Code § 47604.

The specific purpose of this corporation is to establish and operate schools, including but not limited to public charter schools that provide a free education to students in elementary school, middle school, and high school, and such other educational activities as the Board of Directors may define from time to time.⁶

Based on this representation, the Employer-Petitioner was also granted tax-exempt status by the Internal Revenue Service as an Internal Revenue Code Section 501(c)(3) organization.

At the present time, the Employer-Petitioner operates four public charter schools in California, including LPS-Richmond, and has obtained charters to open three additional public charter schools in the future.⁷ The Employer-Petitioner does not currently operate any schools other than public charter schools or operate in any state other than California. LPS-Richmond, which began operation in Fall 2003, was the first public charter school opened by the Employer-Petitioner.

Charter Application Process

Following the Employer-Petitioner's incorporation in May 2002, Kushner submitted a charter application to the West Contra Costa Unified School District (WCCUSD) on November 14, 2002 to operate a public charter high school in Richmond, California. A public school charter in California can only be granted by the state, and only three state entities have the authority to issue public school charters: the state Board of Education, a county Office of Education, and the school district in which the charter school will be located. The Employer-Petitioner chose to submit its charter application to WCCUSD because the proposed school would be located within its boundaries. The Employer-Petitioner identified Richmond as the site for its first charter based on internal criteria consistent with its mission to educate diverse and underserved students: the two high schools in Richmond were among the lowest performing in

⁶ Articles of Incorporation of Leadership Public Schools, Inc., Article II, B.

⁷ In addition to Richmond, the Employer-Petitioner operates public charter schools in Hayward, Oakland and San Jose. The Employer-Petitioner has also obtained charters to open public charter schools in Campbell and Stockton, as well as a second school in Oakland.

the state, there were a significant number of low income students, there were no other small high school alternatives, and Richmond is within 90 miles of the Employer-Petitioner's San Francisco office. There are no laws defining or restricting the locations in California where an organization can seek a public school charter, and no state entity was involved in the Employer-Petitioner's decision to seek a public school charter in Richmond.

Before granting a charter for LPS-Richmond, WCCUSD required a number of changes to the proposed charter initially submitted by the Employer-Petitioner. WCCUSD first responded to the Employer-Petitioner's charter application on December 23, 2002 in a letter identifying 19 areas of concern that had to be addressed before it could consider approving the charter. The letter further stated that "some of these items relate particularly to [WCCUSD] and County of Contra Costa policies and procedures related to charter schools and [WCCUSD's] oversight obligations." Among the concerns, the original draft of the charter did not indicate that WCCUSD has the right to appoint a representative to the Employer-Petitioner's Board of Trustees. The CSA entitles WCCUSD to have a representative on the Employer-Petitioner's Board of Trustees, and the Employer-Petitioner subsequently revised the charter to specify that WCCUSD has the right to a representative on its Board of Trustees.

Another concern was that the original draft of the charter failed to state that the Employer-Petitioner would comply with certain public agency laws, namely the Ralph M. Brown Act, the California Public Records Act and the Political Reform Act. WCCUSD required the charter to specifically state that the Employer-Petitioner would comply with these laws. Although the Employer-Petitioner maintains that it is not subject to these public agency laws, it agreed to satisfy WCCUSD's demand by stating in the charter that it will "voluntarily agree to comply with the Ralph M. Brown Act, the California Public Records Act and the Political Reform Act but does not concede that these laws apply to nonprofit corporations"

WCCUSD also required the Employer-Petitioner to amend its bylaws to state that it will conduct its meetings in accordance with the Ralph M. Brown Act and, further, to incorporate its corporate bylaws by reference into the charter.

Another change involved Special Education staff. Although the proposed charter stated that LPS-Richmond would hire its own Special Education staff, WCCUSD policy prohibits charter schools from hiring their own Special Education staff. Consistent with its policy, WCCUSD required the Employer-Petitioner to amend its charter to state that Special Education staff would be provided by WCCUSD, subject to the mutual approval of LPS-Richmond. Thus, as a result of WCCUSD's policy and the resulting amendment to the charter, the Special Education teachers at LPS-Richmond are employees of WCCUSD, not the Employer-Petitioner.

The Employer-Petitioner further amended the charter to state that, in addition to providing an annual independent financial audit to WCCUSD, it will also provide the audit to the California State Controller, California Department of Education, county Office of Education, and other state agencies if requested. Some of the other changes required by WCCUSD included adding an enrollment preference for existing charter school students and students who reside within WCCUSD and adding the California High School Exit Exam as one of the "measurable pupil outcomes" stated in the charter. The California High School Exit Exam is mandatory for all public high school students in California, but not for private high school students.⁸

WCCUSD also required an Asset Services Agreement (ASA), which is incorporated by reference into the charter. The ASA is more detailed than the charter and establishes the specific financial and service relationship between the Employer-Petitioner and WCCUSD. It is a one-year contract, but renews automatically if there are no proposed amendments.

⁸ Beginning in 2006, all public high school students in California must pass the California High School Exit Exam in order to earn a high school diploma.

After a public hearing, and after the Employer-Petitioner made the required changes to its proposed charter, the Employer-Petitioner's charter to operate LPS-Richmond was approved by WCCUSD on February 27, 2003. The charter was granted for four years and will expire on June 30, 2007, prior to which time the Employer-Petitioner must submit an application to WCCUSD for renewal of its charter in order to continue operating LPS-Richmond as a public charter school. The terms of the ASA were finalized subsequent to the approval of the charter. The ASA was signed by the parties on March 15, 2003 and has continued in effect without amendment.

Employer-Petitioner's Organizational Structure

The Employer-Petitioner is directed by a 15-member Board of Trustees, currently chaired by Scott Pearson, a private individual. Trustee appointments do not have to be approved by WCCUSD or any other state office. Under the CSA and the LPS-Richmond charter, WCCUSD has the right to appoint one member to the Board, although it has not done so. Kushner, the founder of the organization, is also the Chief Executive Officer. Alex Terman, the Chief Operating Officer, and Steven Wesley, the Chief Academic Officer, report directly to Kushner. All of the officers and employees, other than school staff, are based at the home office in San Francisco. Terman is responsible for the Employer-Petitioner's business operations. The Director of Operations, Technology Manager, Senior Accountant, Vice President of Human Resources, and Outreach Director report to Terman. Wesley is responsible for the academic program. The Vice President of Education and all of the school principals report to Wesley.

LPS-Richmond Faculty

LPS-Richmond is headed by a school principal who supervises the LPS-Richmond staff and reports to Steven Wesley. LPS-Richmond teachers are employed by the Employer-Petitioner, except for the Special Education teachers, who are employed by WCCUSD. The

teachers employed by the Employer-Petitioner have no relationship with WCCUSD. None of the teachers were formerly employed by WCCUSD, and LPS-Richmond's charter states that, if they were former employees of WCCUSD, they would have no guaranteed right to return to WCCUSD with restored seniority. With the exception of the Special Education staff, the Employer-Petitioner has the sole responsibility for recruiting and hiring staff at LPS-Richmond. The Employer-Petitioner may also fire teachers at its own discretion. Neither WCCUSD nor any other government entity has the authority to hire or fire staff at LPS-Richmond.

Teachers at LPS-Richmond are not paid according to the WCCUSD pay scale. Their wages, benefits and working conditions are established by the Employer-Petitioner with no input from WCCUSD, and they are paid significantly higher wages than teachers employed by WCCUSD. LPS-Richmond staff also receives health insurance benefits through the Employer-Petitioner, not through WCCUSD or the state.

Although most of their benefits are privately administered, LPS-Richmond teachers participate in the public State Teachers Retirement System (STRS).⁹ As a public charter school, LPS-Richmond has the option of participating in STRS, and the Employer-Petitioner has chosen to participate. Thus, it must comply with state laws governing STRS. LPS-Richmond teachers contribute to STRS through the county Office of Education. The Employer-Petitioner pays the employer's share of the STRS contribution to the county Office of Education, which then pays STRS on behalf of the LPS-Richmond teachers.

LPS-Richmond Funding

The majority of the funding for LPS-Richmond comes from the State of California. Just like other public schools, LPS-Richmond receives most of its funds from the state's general fund based on an average daily attendance formula. The formula for determining how much money

⁹ The record did not establish that STRS represents anything other than what its name suggests, benefits for state employees.

LPS-Richmond will receive based on average daily attendance is set by state law, and in order to receive the funds, LPS-Richmond must submit monthly attendance reports to WCCUSD showing which students were present on which days. LPS-Richmond also receives state lottery funds designated for public schools.

The Employer-Petitioner's independent financial audit for the year ending June 30, 2005 shows that LPS-Richmond's total operating expenses for the 2004-2005 school year were \$2,071,294, and its total state funding was \$1,391,082. Thus, LPS-Richmond received more than 67% of its funds from the state.¹⁰ LPS-Richmond receives its state funds through WCCUSD; however, the state funds designated for LPS-Richmond are not part of WCCUSD's general fund account. Rather, because LPS-Richmond is a direct-funded charter school, WCCUSD must distribute the funds directly to the school.

In addition to the state funds, LPS-Richmond received Federal funds of \$83,767. Also, in addition to government funds, LPS-Richmond raised \$16,438 through school fundraising projects and received philanthropic contributions of \$693,867. The philanthropic contributions were raised by, and donated to, the Employer-Petitioner, not to LPS-Richmond. The Employer-Petitioner allocates the philanthropic contributions among its organizations as it sees fit. For example, for the year ending June 30, 2005, in addition to the funds allocated to LPS-Richmond, the Employer-Petitioner allocated philanthropic contributions of \$429,372 to its San Jose campus, \$567,500 to its Oakland campus, \$340,000 to its Hayward campus, and \$1,595,450 to its San Francisco office.

¹⁰ In its post-hearing brief, the Employer-Petitioner states that LPS, Inc. relies on public money for 43% of its funding. The Employer-Petitioner declined to point out that this 43% figure applies to LPS, Inc., i.e. the nonprofit corporation which operates other activities in addition to LPS-Richmond. The record shows that LPS-Richmond, the public charter school, receives 67% of its funding from the state general fund based on its average daily attendance.

Although LPS-Richmond has received state funds since its opening, the Employer-Petitioner initially had to spend private funds to create the LPS-Richmond campus. WCCUSD provided the land for the school, an empty lot, but the Employer-Petitioner borrowed about \$360,000 for the initial leasing and installation of the portable classrooms that serve as the school's facility. The Employer-Petitioner was solely responsible for clearing the land of debris, leasing the portables, obtaining the necessary permits, and installing them, including the trenching and electrical wiring required for installation. WCCUSD did not co-sign the Employer-Petitioner's start-up loan and is not liable for it.¹¹ The Employer-Petitioner has repaid the start-up loan with both state and private funds.

Financial Reporting

Pursuant to the CSA, LPS-Richmond is required to provide an annual independent financial audit, as well as four interim financial reports to WCCUSD. The fourth interim report is the un-audited year-end report. Cal. Educ. Code § 47604.33. In addition to reporting to WCCUSD, LPS-Richmond provides its annual independent financial audit to the county Office of Education, the California Department of Education and the California State Controller. LPS-Richmond's interim financial reports are included by WCCUSD in its own interim financial reports, which it submits to the county Office of Education. For this reason, LPS-Richmond must submit its reports no later than three weeks before WCCUSD's own report is due to the county. Since LPS-Richmond's interim financial reports are included in WCCUSD's interim financial reports to the county, LPS-Richmond is effectively submitting interim reports to the county, as well as to WCCUSD.

¹¹ The CSA provides that the chartering authority is not liable for the debts or obligations of the charter school if the authority has complied with its oversight obligations. Cal. Educ. Code § 47604(c).

Compliance with State Law

As a public charter school, LPS-Richmond is exempt from most of the state education laws governing traditional public schools but subject to others. For example, LPS-Richmond does not have to use the curriculum or textbooks adopted by WCCUSD. However, its curriculum must meet state content standards, and it must select its textbooks from a state-approved list. The state has also set different requirements for public charter schools than for traditional public schools. For example, the state requires LPS-Richmond, and all public charter high schools, to have 175 days of instruction, whereas traditional public high schools are required to have 180 days of instruction. LPS-Richmond also does not have to follow state requirements regarding class size or student/teacher ratios. However, LPS-Richmond students are required to take the same state academic performance tests as other public high school students, including the California High School Exit Exam.

Revocation of Charter

WCCUSD may revoke LPS-Richmond's charter based on a material violation of the charter, failure to meet or pursue any of the pupil outcomes stated in the charter, failure to meet generally-accepted accounting principles or other fiscal mismanagement, or any other violation of the law.¹² Although WCCUSD must first give LPS-Richmond notice and an opportunity to cure a violation, it clearly has the authority under the CSA to revoke the charter.¹³ In addition, the State Board of Education may revoke LPS-Richmond's charter for gross financial mismanagement, illegal or substantially improper use of school funds, or substantial and sustained departure from successful instructional practices.¹⁴

¹² Cal. Educ. Code § 47607(c).

¹³ Cal. Educ. Code § 47607(d).

¹⁴ Cal. Educ. Code § 47604.5.

ANALYSIS

The sole issue presented here is whether the Board has jurisdiction over the Employer-Petitioner at LPS-Richmond. Section 2(2) of the Act reads in pertinent part: “The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any State or political subdivision thereof . . .” While neither the Act nor its legislative history defines a “political subdivision,” in *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971), the Supreme Court of the United States adopted the Board’s definition that an entity is a political subdivision if it is either: 1) created directly by the state so as to constitute a department or administrative arm of the government; or 2) administered by individuals who are responsible to public officials or to the general electorate. *Id.* at 604-605. The record establishes, and I find, that LPS-Richmond is a political subdivision of the State of California under both prongs of the *Hawkins* test. Thus, the Board does not have jurisdiction over the Employer-Petitioner at LPS-Richmond.

LPS-Richmond is a Statutorily Created Public School

Although Federal law, not state law, is controlling in determining whether an entity is a political subdivision, state law must nonetheless be given “careful consideration.” *Id.* at 602. The Board thus considers the state’s enabling legislation or intent in deciding whether an employer is exempt from the Act’s coverage. *Research Foundation of the City University of New York*, 337 NLRB 965, 968 (2002).

In California, the enabling legislation for charter schools is the CSA. The CSA, in conjunction with the California Constitution, makes clear that charter schools are recognized as “public schools” in California and are considered part of local and state government. In this regard, the California State Constitution makes clear that public schools are considered part of local and state government. Article IX, § 5 of the California Constitution provides: “The

Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year a school has been established.” Article IX, § 6 states in pertinent part: “No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.” Further, Article IX, § 8 reads in relevant part: “No public money shall ever be appropriated for the support of ... any school not under the exclusive control of the officers of the public schools”

LPS-Richmond, like all public charter schools in California, was created pursuant to the CSA, which is part of the California Education Code. The state legislature’s declared purpose for enacting the CSA was “to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure” in order to, among other things, improve student learning, encourage innovative teaching, expand educational choices, and “provide vigorous competition within the public school system.” Cal. Educ. Code § 47601. Thus, the legislature’s stated purpose for the CSA is to allow charter schools to operate “independently from the existing school district structure,” yet still “within the public school system.” Cal. Educ. Code § 47601. This is consistent with Article IX § 8 of the California Constitution, which declares that “no public money shall ever be appropriated for the support of . . . any school not under the exclusive control of the officers of the public schools” Thus, the California legislature enacted the CSA to authorize charter schools, as part of the public school system, and to govern how they would be formed and funded with public money.

That charter schools are “public schools” cannot therefore be disputed. Indeed, the Employer-Petitioner concedes this point in its post-hearing brief. However, it argues that LPS-

Richmond, while a public school, is not a political subdivision of the state and contends that provisions in the CSA support its position. Among other things, it contends that nothing in the CSA indicates that a nonprofit public benefit organization that chooses to operate charter schools in California should be deemed a public agency or is transformed into an administrative arm of the state. Contrary to the Employer-Petitioner's contentions, the CSA specifically states that the state legislature, in enacting the CSA, intended to make charter schools "part of the Public School System," under the jurisdiction of the Public School System and in the exclusive control of the officers of the public schools. Cal. Educ. Code § 47615.

In *Hinds County Human Resources Agency*, 331 NLRB 1404 (2000), the Board found that an agency administering low-income assistance programs in Mississippi was exempt from the Act's coverage under the first prong of the *Hawkins* test because the state's enabling statute demonstrated the legislature's clear intent that local government retain control over the agency. The Board also found the state's characterization of an entity, through administrative rulings, to be an important factor in determining the more specific question of whether an employer was created so as to constitute a department or administrative arm of the government. The Board further relied on the state's significant control over the agency's funding, budgeting and auditing, as well as the agency's tax-exempt status and participation in the state retirement system.

Here, as in *Hinds County*, the state legislature expressed its intent in the enabling statute that the government retain control over the public charter schools. The CSA clearly states that "[c]harter schools are part of the Public School System, as defined in Article IX of the California Constitution." Cal. Educ. Code § 47615(a)(1). It further states that "[a] charter school shall be deemed under the exclusive control of the officers of the public schools for purposes of Section 8 of Article IX of the California Constitution, with regard to the appropriation of public monies to be apportioned to any charter school, including, but not limited to, appropriation made for the

purposes of this chapter.” Cal. Educ. Code § 47612(a). Moreover, the state retains the authority to revoke or not renew LPS-Richmond’s charter.¹⁵

Also, as in *Hinds County*, California government officials have repeatedly ruled that public charter schools are subdivisions of the state. In *Options for Youth-Victor Valley, Inc.*, (2004) PERB Decision No. 1701, PERB held that public charter schools are political subdivisions of the state due to the numerous government controls provided for in the CSA. In *Wilson v. State Board of Education*, 75 Cal. App. 4th 1125 (1999), the California Court of Appeals explained the government controls as follows:

. . . charter schools are *strictly* creatures of statute. From how charter schools come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation – the Legislature has plotted all aspects of their existence. Having created the charter school approach, the Legislature can refine it and expand, reduce or abolish charter schools altogether. *Id.* at 1135 (emphasis in the original).

Even though charter schools operate independently from local school districts on a day-to-day basis, the *Wilson* court held that “charter school officials are officers of public school Districts.” *Id.* at 1141. The court found that state officials retain “exclusive control” over charter schools based on their power to issue and revoke charters and their oversight responsibilities.

Finally, the Board in *Hinds County* also considered the state’s significant control over the employer’s funding, budgeting, and auditing. In this regard, the majority of LPS-Richmond’s funding, about 67% for the 2004-2005 school year, comes from the state. LPS-Richmond was also required to submit its first-year budget to WCCUSD before beginning operations. Although LPS-Richmond has not subsequently been required to provide a projected annual budget to WCCUSD, it is required to provide an annual independent financial audit, as well as four interim

¹⁵ In its brief, the Employer-Petitioner attempts to distinguish Hinds County by contending that the enabling statute in Hinds County expressly provided for the creation of the Head Start by the state, unlike the instant case where LPS-Richmond was created by an individual in his private capacity. I find this distinction unpersuasive. Simply stated, LPS-Richmond did not and could not exist as a “public school” or as a “charter school” before its petition was approved by WCCUSD. Under California law, it is clear that this is the only way to establish a public charter school.

financial reports. LPS-Richmond must submit its annual independent financial audit to WCCUSD, the county Office of Education, the California Department of Education, and the California State Controller. Moreover, since LPS-Richmond's interim financial reports are included in WCCUSD's own interim financial reports to the county Office of Education, LPS-Richmond is effectively submitting interim reports to the county, as well as to WCCUSD.

In *Jarvis Public Library Assn.*, 262 NLRB 1386 (1982), the Board concluded that the employer, a library, was a state-authorized educational facility and an administrative arm of the state notwithstanding that the library's director and its board of trustees exercised significant operational autonomy in the day-to-day operation of the library. The Board based its conclusion on the following: (1) the city and state exercised significant control over the library's expenditures by reason of the required submission of an annual budget to each prior to funding approval; (2) the library's employees were covered under the city's health insurance plan and the state's retirement system; and (3) the library's revenue was largely derived from the city, county and state. Similarly, LPS-Richmond is funded primarily by the state; required to submit interim and yearly financial reports to WCCUSD, the county and the state; and its teachers participate in the State Teachers Retirement System. Thus, like in *Jarvis Public Library Assn.*, it is not controlling that officers of the Employer-Petitioner exercise significant control of the charter school's day-to-day operations.

Conclusion Regarding the First Prong of the *Hawkins* Test

The CSA makes clear that the California legislature intended public charter schools to be part of the public school system, and therefore, subdivisions of the state. This legislative intent has been recognized and upheld by California courts. LPS-Richmond is predominantly funded by the state and is financially accountable to the state. Thus, I find that LPS-Richmond was "created directly by the state so as to constitute a department or administrative arm of the

government” and is, therefore, a political subdivision of the state under the first prong of the *Hawkins* test. *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600, 604-605 (1971). Accordingly, I find that LPS-Richmond is exempt from the Act’s coverage.

LPS-Richmond Is Administered by Individuals Responsible to Public Officials

Although an entity need only meet one prong of the *Hawkins* test to be exempt from the Act, I find that LPS-Richmond meets the second prong of the test because it “is administered by individuals who are responsible to public officials or to the general electorate.” *Id.* at 604-605. Here, the Employer-Petitioner’s Board of Trustees is directly accountable to public officials for LPS-Richmond’s finances. LPS-Richmond must provide four interim financial reports to WCCUSD each year, which WCCUSD then includes in its own interim financial reports to the county Office of Education. LPS-Richmond is also required by the CSA and its charter to submit annual independent financial audits to WCCUSD, the county Office of Education, the California Department of Education, and the California Controller. Although no state office has ever responded to LPS-Richmond’s financial audits, the state nonetheless possesses the authority under the CSA to revoke LPS-Richmond’s charter if the audits reveal gross financial mismanagement, illegal or substantially improper use of school funds, or the failure to use generally-accepted accounting principles. Thus, the ultimate accountability to public officials is demonstrated by the state’s right to revoke LPS-Richmond’s charter.

In addition, under the CSA, a material violation of the charter or a violation of any provision of law are both grounds for revocation. Cal. Educ. Code § 47607(c). Thus, LPS-Richmond is continuously accountable for upholding the requirements of both its charter and the

CSA.¹⁶ Moreover, the CSA includes various provisions to monitor compliance with school charters and provisions of law. In addition to the mandated financial reporting that each charter school is required to submit to its chartering authority, a county superintendent of schools may, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within its jurisdiction and conduct an investigation into the operations of that school. Cal. Educ. Code § 47604.4. Therefore, while the Employer-Petitioner's Board of Trustees makes governance decisions for the school, LPS-Richmond is not excused from many regulations and reporting requirements that apply to all public schools.

Conclusion Regarding the Second Prong of the *Hawkins* Test

Based on the foregoing and the record as a whole, I find that the state's and WCCUSD's authority to revoke LPS-Richmond's charter, financial oversight, and WCCUSD's right to a representative on the Board of Trustees sufficiently demonstrate that the Employer-Petitioner is accountable to public officials for the operation of LPS-Richmond. Accordingly, I find that LPS-Richmond is exempt from the Act's coverage under the second, as well as the first, prong of the *Hawkins* test.

CONCLUSIONS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, including the parties' arguments made at the hearing and in the briefs, and in accordance with the discussion above, I conclude and find as follows:

¹⁶ For example, it can only hire teachers who possess the teacher credentials required by the CSA. It must conduct a criminal background check and fingerprinting of each teacher. It must select textbooks from a state-approved list. It must comply with the CSA's requirements for the number of minutes and days of instruction, and it must administer the California standardized tests.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. With regard to commerce jurisdiction only, the parties stipulated, and I find, that the Employer-Petitioner is a California nonprofit corporation that is engaged in the operation of a public charter school in Richmond, California. During the past 12 months, a representative period, the Employer-Petitioner has derived gross revenues in excess of \$500,000. During the same period, the Employer-Petitioner has purchased and received goods valued in excess of \$50,000 that were shipped directly to it from points located outside the State of California. Thus, notwithstanding my conclusion that the Employer-Petitioner is exempt from the Board's jurisdiction regarding labor relations at LPS-Richmond, I find that the Employer-Petitioner is otherwise engaged in commerce within the meaning of the Act.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer-Petitioner at LPS-Richmond.

4. I find that LPS-Richmond is a political subdivision exempt from the Act's coverage; therefore, any question concerning representation falls outside the statutory authority of the Board.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 19, 2006.

DATED AT Oakland, California, this 5th day of May, 2006.

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